HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 4141/01 (S/S)

Imarati Devi

Vs.

V.C. and others.

Approved for reporting

~~Not approved for reporting~~

Date of decision 28.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 4141 of 2001.

Smt. Imarati Devi wife of Har Prasad, R/o G Block Haldi, District Udham Singh Nagar. …… Petitioner.

Versus

1. Vice Chancellor Agriculture University, Pant Nagar.
2. Assistant Director Agriculture Works, Central Zone, Haldi.
3. Establishment Officer, Pant Nagar University, Pant Nagar.

…… Respondents.

Sri Subhash Upadhyaya, learned counsel for the respondent/review petitioner.
Sri K.N. Joshi, learned counsel for the petitioner.

HON'BLE RAJESH TANDON, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 30.9.1997 and order dated 18/21.05.1988 passed by respondent No. 2 and 1 respectively.

Briefly stated, the petitioner was appointed on 15.7.1976 as daily wager on the post of agricultural labour. However, she was regularized on 21.7.1992. The Petitioner has raised a dispute regarding date of birth and she appeared on 23.01.1993 before the Medical Board who has assessed her age about 40 years and her date of birth was mentioned as 01.03.1940 in the Employees Provident Fund. According to the petitioner, as per medical certificate the correct date of birth is 23.01.1953 and, as such, she will be retiring on January, 2013 but she has been retired on 1.03.2000 treating her date of birth 01.03.1940. The petitioner, therefore, has challenged the order retiring the petitioner on the basis of the date of birth mentioned in the service book. Petitioner has submitted that he was born on 18.9.1937. As per service record on reaching the age of superannuation, i.e. 60 years the petitioner has retired on 30.09.1997. Aggrieved by the said order the petitioner has filed a writ petition No.34777 of 1997 in which the following order was passed:

"This writ petition is directed against the order dated 30 September 1997 passed by the assistant director agriculture works respondent No.-3 intimating the petitioner that on attaining the age of superannuation she will retire on 30, September 1997.

I have heard Sri H.S. Shukla holding brief of Smt. Sarita Shukla learned counsel for petitioner and Sri Dinesh Kakkar learned counsel for respondents.

The despite relates as to what is the correct date of birth of the petitioner. The allegation of the petitioner is that she was appointed as daily wager on 15th July, 1976. She was regularized in service on 11-7-1992. She was required to produce age certificate by the medical board of the University. The petitioner submitted declaration form and the certificate of the medical board dated 23.01.1993 alleged to be a duplicate copy issued on 6-6-1995 annexed as Annexure No.-4 to this writ petition wherein the age of the petitioner, according to the medical officer Incharge, G.B. Pant Nagar University of Agriculture and Tech. Pant Nagar is 40 years.

Sri Dinesh Kakkar, learned counsel for the respondents, submitted that according to the record the date of birth of the petitioner is 12.09.1937.

The question as what is the correct date of birth and what in the evidence on record can be considered by the appropriate authority considering the facts and circumstances of the present case and having heard learned counsel for the parties it is directed that in case, the petitioner submits representation to the Vice Chancellor, G.B. Pant Nagar Agriculture University, Pant Nagar, respondent No.-2 alongwith certified copy of this Order and a true copy of the writ petition, the Vice Chancellor shall dispose of the same by a speaking order after affording opportunity to the petitioner and making necessary inquiry with regard to the date of birth of the petitioner within two months from the date of submission of the representation.

The writ petition is accordingly disposed of."

In compliance of the aforesaid order the representation of the petitioner has been decided by order dated 18/21.5.1998 by assigning the reasons. The same is quoted below:

";g fd Jherh bejrh dks fn0 7&4&98 dks O;fDRkxr :i ls lquokbZ dk volj iznku fd;k x;kA lquokbZ ds nkSjku Jhefr bejrh }kjk dgk x;k fd Jh vej flag iq= Jh gj izlkn] fu;fer d`f"k jfed ts0 [kaM mudk lkSrsyk iq= gS tks muds ifr dh igyh iRuh ftudh e`R;q gks pqdh gS dk iq= gSA

Jh bejrh ls fuEu fcUnqvksa ij izek.k izLrqr djus gsrq i= fn0 11&4&97 ,oaa 25&4&98 }kjk funsZf'kr fd;k x;k FkkA

¼i½ Jh vej flag iq= Jh gj izlkn mudk lkSrsyk iq= gS rFkk muds ifr dh igyh iRuh ls gSA blds leFkZu esa izek.k i= izLrqr djsaA

¼ii½ mudh ifr dh igyh iRuh dh e`R;q gks pqdh gS blds leFkZu esa izek.k i= izLrqr djukA

mijksDr i= ds mRrj esa Jherh bejrh us dsoy izkFkZuk i= fn;k ftlesaa mUgskaus dksbZ izek.k i= izLrqr ugha fd;sA vr% i=koyh esa miyC/k vfHkys[kkssa ,oa mijksDRk rF;ksa ds vk/kkj ij Jherh bejrh dh tUe frfFk bZ0ih0,Q0 ds vuqlkj 12&9&1937 gksus ds vk/kkj ij mUgsa 60 o"kZ dh vk;q iw.kZ djus ij fnukad 30&9&1997 dks lsokfuo`Rr fd;k x;k gS tks fu;ekuqlkj gSA"

As will appear from the order itself that in the Employees Provident Fund Scheme the date of birth of the petitioner has been mentioned as 12.9.1937. The vice Chancellor has further observed that the son of the petitioner was also employed as a labour and, as such the date of birth has been recorded as 26.12.1975. So far as the son of the petitioner by no stretch of imagination there can be a difference of four years so as to treat the age of the petitioner as 23.1.1953. The relevant paragraphs No. 4 and 5 to that effect are quoted below:

";g fd dk;kZy; vkns'k la0 ih,ech@11@73 fn0 21&11&90 esa Li"V mYys[k gS fd ftu Jfedksa@deZpkfj;ksa dh vk;q bZ0ih0,Q0 esa ntZ gS og ekU; gksxhA Jherh bejrh dks vkns'k la0 ih,ech@fu;ferhdj.k 8386] fn0 2 Qjojh] 193 }kjk 1&6&91 dh izHkkoh frfFk ls fu;fer fd;k x;kA blfy, muds izdj.k esa fu;ferhdj.k vk;q fu/kkZj.k laca/kh mijksDr vkns'k fuxZr gksus ds ckn gqvk gS vr,o Jherh bejrh dh lsok iqfLrdk esa vk;q dk fu/kkZj.k bZ0ih0,Q0 vfHkys[k esa ntZ tUefrfFk ds vuqlkj gh fd;k x;kA esfMdy cksMZ ds vk/kkj ij tUefrfFk dk fu/kkZj.k mUgha ekeys esa fd;k tkuk Fkk tgkW bZ0ih0,Q0 esa vk;q ntZ u gksA

;g fd Jherh bejrh dk iq= Jh vej flag fo'ofo|ky; QkeZ esa gh Jfed :Ik esa dk;Zjr gS ftudh tUefrfFk 26&12&1957 vfHkys[kksa esa ntZ gS bl izdkj Jherh bejrh dh tUefrfFk esfMdy cksMZ ds vuqlkj 23&10&1953 gksuk laHko ugha gS D;ksafd ekrk vkSj iq= dh vk;qq esa ek= 4 o"kZ dk varj ugha gks ldrkA"

In **G.M. Bharat Cooking Coal Ltd, West Bengal Vs Shib Kumar Dushad and others reported in AIR 2001 Supreme Court 72,** the Apex Court has observed as under:

"Before entering into the question of validity and sustainability of the judgment passed by the single Judge and the Division Bench of the High Court in this case we would like to make the observation that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under Service Rules or General Instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the fact of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer.

The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retrial benefits he would be entitled to. Therefore, while determining the dispute in such matters Courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly which will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the Court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the Courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the Court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy of which the employee next in the line has been waiting does not materialize, on record of which the junior is denied

promotion which he has all along been led to believe will be his due on the retirement of the senior."

In view of the aforesaid I see no reason to interfere with the order passed by the Vice Chancellor, Agricultural University, Pant Nagar. However, the petitioner, if advised, may approach for the alternative remedy available to her.

Subject to aforesaid observations of availing the alternative remedy, writ petition lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

28.08.2006.
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